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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (ALEXANDRIA)

In Re:) Case No. 24-10453-BFK
) Alexandria, Virginia
ENVIVA INC., ET AL.,)
)
Debtors.) October 4, 2024
) 11:32 a.m.
-----)

TRANSCRIPT OF HEARING ON
(1002) DEBTORS' MOTION TO SCHEDULE HEARING FOR APPROVAL OF
DISCLOSURE STATEMENT AND RELATED MOTIONS
(1055) DISCLOSURE STATEMENT
(1057) DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING (A)
THE ADEQUACY OF THE DISCLOSURE STATEMENT, (B) THE SOLICITATION
AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE PLAN,
(C) THE FORMS OF BALLOTS, OTHER SOLICITATION MATERIALS, AND
NOTICES IN CONNECTION THEREWITH, (D) THE SCHEDULING OF CERTAIN
DATES WITH RESPECT THERETO, (E) THE RIGHTS OFFERING PROCEDURES,
(F) THE OVERBID PROCEDURES, AND (III) GRANTING RELATED RELIEF
(1058) DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE (A) DEBTORS ENTRY INTO, AND PERFORMANCE UNDER, THE BACKSTOP
COMMITMENT AGREEMENT, (B) DEBTORS ENTRY INTO, AND PERFORMANCE
UNDER, THE EXIT FACILITY COMMITMENT LETTER, AND (C) THE PAYMENT
AND ALLOWANCE OF RELATED PREMIUMS, FEES AND EXPENSES AS
ADMINISTRATIVE EXPENSE CLAIMS OR SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, AS APPLICABLE; AND (II) GRANTING RELATED RELIEF
BEFORE THE HONORABLE BRIAN F. KENNEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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12 Also Present: Glenn Nunziata
13 Enviva Inc.

14 Jason Paral, Esq.
15 Enviva Inc.

16 Christopher Sweeney, Esq.
17 Enviva Inc.

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20

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1 THE CLERK: Item number 2, 3, and 4, Enviva Inc.,
2 bankruptcy case number 24-10453.

3 THE COURT: All right. Good morning, everybody. Nice
4 to see everybody again.

5 Is it Mr. Parlen?

6 MR. PARLEN: Yes, Your Honor.

7 THE COURT: I'll hear from you, please.

8 MR. PARLEN: Good morning, Your Honor. Andrew Parlen
9 with Paul Weiss on behalf of the debtors. I have with me here
10 today my colleagues Michael Colarossi and Chloe Nanfara from
11 the Kutak firm Peter Barrett, Jeremy Williams. And from Enviva
12 CEO Glenn Nunziata, general counsel Jason Paral, and associate
13 general counsel Chris Sweeney.

14 Your Honor, there was a lot of paper obviously filed
15 this morning as recently as an hour ago. What I thought I
16 could do, if it's okay with Your Honor, is to provide an update
17 ahead of the agenda --

18 THE COURT: Okay. That's fine.

19 MR. PARLEN: -- so that we can have everyone here on
20 the same page.

21 So Your Honor, the headline is pretty simple. The
22 debtors have a global settlement for a Chapter 11 plan and are
23 proceeding today on an uncontested basis. So that's the
24 headline, global settlement. The story is this.

25 In August, we were before, Your Honor, twice, once for

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1 exclusivity and once on a hearing to set the -- on a motion to
2 set this hearing today. And at those hearings, we emphasized
3 the importance of the calendar, of the toll it takes on an
4 operating business like Enviva to linger and drift in a
5 lengthy, combative, litigious bankruptcy and of the opportunity
6 emerging from Chapter 11 with a fresh start in a timely way
7 provides this type of company, the necessity of it.

8 When we asked Your Honor for this hearing on August
9 22nd, we explained the need to move forward with a plan
10 process, even though at the time the debtors were at odds with
11 the official committee, with the UCC, and the RWE committee,
12 the committee of holders of claims, the RWE claim. We
13 explained to Your Honor at the time, and to everyone else,
14 frankly, that we needed a forcing function, that we needed to
15 create definition, and that we intended to file a plan, a
16 nonconsensual plan, to do just that. And so Your Honor gave us
17 this hearing. And at the end of the hearing, Your Honor said
18 to all of us, pick up the phone. Your Honor said, communicate.
19 Your Honor said, work cooperatively.

20 So that's what we did. Eight days later, on August
21 30th, we filed the plan and disclosure statement along with the
22 motion for backstop commitment and financing commitment, which
23 is on the agenda today. And again, we did this not as an
24 ultimatum in any way, but as an invitation. Not as an attack,
25 but as a prompt. And to their credit, while everyone started

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1 gearing up their litigation machines and tensions did rise,
2 both the UCC and the RWE committee took this all for what it
3 was, like I said, an invitation and a prompt. Now, agreement
4 was far from guaranteed, and a brutally contested confirmation
5 was around the corner. But nobody took a burn-down-the-other-
6 guy's-house approach.

7 Now, if there's one thing, Your Honor, that the board
8 of Enviva, the plan evaluation committee, the management team
9 here have imbued on us, the company's advisers, it's urgency.
10 And what Your Honor did by giving us this hearing today was
11 providing everyone here a five-week window from plan filing at
12 the end of August to just a few hours ago, frankly, to take
13 this sense of urgency, which you heard so much about from me
14 back then, and do something about it, which we did, which
15 everyone here bought into and did as well.

16 We used the last five weeks, Your Honor, to see
17 whether we could come to an agreement on a Chapter 11 plan, and
18 particularly in the last ten days or so, with the specter of
19 this hearing looming out there, what feels like sometimes it
20 really has been around the clock work, drafting, negotiation,
21 more time on the phone than off of it, and the result of which
22 is a document filed an hour or so ago, which I want to draw the
23 Court's attention to. That is docket number 1155, and it is
24 titled, "Stipulation and Agreed Order".

25 Now, Your Honor, the stipulation is eleven pages long.

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1 Six pages of text. The seventh page is a page we hope Your
2 Honor will sign by so ordering the stipulation. And four
3 signature pages, one for each party of the stipulation. The
4 six pages of text --

5 THE COURT: This is an update of what's at docket
6 1121? In other words, the stipulation and agreed --

7 MR. PARLEN: Correct. This will supersede it, and
8 I'll explain why.

9 THE COURT: Right.

10 MR. PARLEN: So 1121, let me take a step back, that
11 was about a week ago, when we agreed on a protocol for this
12 hearing at the time when there was not a -- there was not a
13 consensual plan. The parties agreed to have argument at this
14 hearing but no evidentiary hearing, no witnesses, and to push
15 everything around valuation, the issues the UCC raised last
16 time around, to confirmation. And we put forth in that
17 document proposed confirmation schedule with litigation
18 discovery expert.

19 That's now obsolete because of docket number 1155.
20 Okay. So what docket number 1155 does, this stipulation, these
21 six pages of text, which are the most important six pages of
22 all the thousands of pages filed in this case so far, is
23 something pretty simple. What they say is that the parties
24 have entered into a global settlement, embodied in the amended
25 plan, which was filed a few hours earlier this morning, that

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1 the parties will support that plan, and the parties will
2 immediately amongst themselves cease all litigation.

3 So again, 1121, which I believe was the prior
4 stipulation, is now obsolete. And it's actually referenced in
5 paragraph -- if you look at the stipulation, paragraph 5 says,
6 "The stipulation and agreed confirmation scheduling order filed
7 at docket 1121 shall be superseded by the stipulation order and
8 shall no longer have any force and effect. And the litigation
9 by the parties contemplated therein shall not occur. And all
10 preparatory efforts, costs, and expenses of the parties related
11 thereto shall immediately cease."

12 Just to close out here, a few things about the
13 stipulation. Who are the parties? To be clear, for the
14 record, the debtors and the official committee, both of the
15 estate fiduciaries, the ad hoc group, whose members are the
16 debtors' DIP lenders, who hold the vast majority of the
17 debtors' secured and unsecured debt, who are committing to the
18 equity and debt capital that will be the subject of the next --
19 of the motion, and who will be the new owners of the debtors,
20 and fourth, the RWE committee, whose members hold the largest
21 unsecured claim in this case other than the bonds.

22 So just as importantly as we stand here today, Your
23 Honor, we know of no stakeholder who intends to oppose the
24 plan. Somebody might, but we don't know who that might be.
25 There's no indication there will be such a stakeholder. So

Colloquy

1 this is a truly momentous achievement for this case and the
2 debtors.

3 So today's not confirmation. But the settlement
4 provides the debtors with a wide open road to confirmation,
5 subject to Your Honor's approval of the disclosure statement
6 and permitting the debtors to solicit votes, and subject to
7 this Court holding a confirmation hearing and approving the
8 confirmation of the plan.

9 A brief description of the plan and the settlement for
10 Your Honor and for the record. It is a reorganizing plan based
11 on the business plan that's included in the disclosure
12 statement. The first lien debt will be refinanced, and that's
13 with the financing committed by the ad hoc group or by a third-
14 party financing that's more favorable. The DIP financing will
15 be paid in cash in part, and the other part of it will be
16 converted to equity in the reorganized company.

17 Unsecured bonds under the plan, what they're going to
18 get is the right to participate in a rights offering on the
19 terms laid out in the plan and in the backstop motion. Certain
20 bondholders who are not in the ad hoc group, there's a small
21 minority of them, will have the opportunity, should they
22 choose, to take cash instead of rights to participate in the
23 equity, and that was part of the settlement with the UCC.

24 The company has several unsecured creditors who are
25 not bondholders. They are trade creditors. They are contract

Colloquy

1 rejection counterparties and the like. They are going to share
2 in a cash pool of 41.94-million dollars. That is up from the
3 thirteen-to-eighteen million that was in our the debtors'
4 August 30th nonconsensual plan. That was the product of
5 vigorous negotiations among the parties. And it was a linchpin
6 of this settlement.

7 Equity, current equity of the debtors will not receive
8 any recovery. Preference claims against trade creditors will
9 be released. And the debtor's estate causes of action
10 following on the investigation, the special committee and the
11 work of the plan evaluation committee will be released, other
12 than certain specific claims against specified individuals as
13 laid out in the plan and explained in the disclosure statement.

14 So Your Honor, just in closing, I do want to also take
15 a moment to acknowledge the interaction and the efforts of the
16 U.S. Trustee's office. As I said, we're here on an uncontested
17 basis today. We'll talk a little bit more about that in the
18 context of the disclosure statement motion itself. But this
19 is, in our view, a result of consistent and focused engagement
20 over several weeks with the United States Trustee's office.

21 I want to thank Mr. Herron for just how quickly and
22 timely he responded to us on all that we've thrown at his
23 office, because there has been a lot, as you can see.

24 Two other quick points. One, I think the
25 professionals in the situation can be overly self-

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1 congratulatory, but I do think one thing that made a difference
2 here is principals did engage. It wasn't just advisors,
3 whether it be the company's management team, members of the RWE
4 committee, members of the ad hoc group. Principals were
5 involved in these negotiations and helped drive this outcome to
6 where it is today. And it's critically important.

7 And finally, to the extent the advisors do plaudits,
8 it's really goes to the junior folks of the team who you're not
9 going to hear from today. All of the teams who worked so hard
10 and did so much to get us here, not just last night, but in all
11 the nights before that.

12 So Your Honor, I am going to yield, unless Your Honor
13 has questions for me, to Mr. Alberino. And then we can get
14 into the agenda.

15 One last, Your Honor, I would ask that as part of
16 today's hearing, we would like the -- we do request that docket
17 1155 be so ordered, but we can take that up when Your Honor's
18 ready.

19 THE COURT: Okay. Thank you.

20 MR. PARLEN: Thank you.

21 THE COURT: Thank you for your remarks.

22 Mr. Alberino.

23 MR. ALBERINO: Good morning, Your Honor. Scott
24 Alberino from Akin Gump for the record on behalf of the
25 official committee.

Colloquy

1 Your Honor, as Mr. Parlen kind of laid out for the
2 Court, a lot of work has gone into creating a global settlement
3 here that I think takes a lot of very complicated and very
4 expensive litigation out of the Court's hands here. I do want
5 to highlight a few things for Your Honor, leaving aside the
6 plan. A lot of work has went in -- went into this settlement.
7 I think we've spent the better part of this case doing a lot of
8 work behind the scenes, preparing for the negotiation that
9 really broke out at the end of August and has continued through
10 the early hours of today. And there's a lot of work that went
11 into understanding the valuation issues. Our value allocation
12 issues. There was a significant investigation that went on
13 with respect to pre-petition transactions in this case. And I
14 think where we ended up, for the debtors as well as for the
15 committee and other constituencies, is a global settlement and
16 compromise that is fair for all sides.

17 We, as a committee, and in connection with the
18 settlement, we would like to include in the solicitation
19 materials a letter from the committee recommending that class 5
20 and 6 creditors vote in favor of the plan. Your Honor, I
21 believe a copy of the letter was included on docket number
22 1152. I believe, unless Your Honor has any questions about the
23 form of the letter, it essentially kind of summarizes, I think,
24 the core terms of the settlement. And as you can tell, the
25 materials that are going out are pretty dense. Pretty tough to

Colloquy

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1 follow, through no fault of anybody other than it's a
2 complicated settlement. And I think, in the spirit of
3 disclosure, getting all the extensive kind of elements and all
4 the factual detail out there was important. But we've included
5 a summary in the letter that I think, for voting creditors,
6 essentially kind of puts the settlement terms that they care
7 about front and center in plain English so they understand it.

8 So I did want to just highlight for Your Honor that we
9 would like to include as part of the solicitation package this
10 brief two-page letter urging holders of class 5 and 6 claims to
11 vote in favor of the plan.

12 Other than that, Your Honor, just echoing Mr. Parlen's
13 comments. There's a lot of work between principals and
14 advisors on all sides now, not just the lawyers, financial
15 advisors, bankers, that have done a lot of work that can, I
16 think, lay the groundwork for the settlement and compromise
17 that's in front of you so --

18 THE COURT: Okay. Thank you.

19 MR. ALBERINO: Thank you.

20 THE COURT: Does anybody else want to make any
21 preliminary comments before we actually get to address the
22 disclosure statement?

23 Yes, sir.

24 MR. SCHIFF: Thank you, Your Honor. David Schiff of
25 Davis Polk on behalf of the ad hoc group.

Colloquy

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1 Your Honor, we're very pleased to be here with the
2 debtors, with the committee, with the RWE committee supporting
3 a consensual plan and a global settlement. We're also very
4 pleased to be providing the financing commitments that underpin
5 that settlement. We'll get to that on the agenda today. But
6 that's a very important component of where we are.

7 Your Honor, I echo what Mr. Alberino and Mr. Parlen
8 said. This is the product of significant engagement among a
9 number of parties over a long period of time. I do want to
10 note, it's also the product of a great deal of work over many
11 months from the beginning of this case and going back even
12 before that, frankly, from members of the ad hoc group the
13 investors and their institutions to do the due diligence, the
14 hard work of engaging with the debtors and ultimately engaging
15 with other parties to be able to understand the business and
16 underwrite the business to make a restructuring this complex
17 and frankly, this resource intensive possible.

18 Our focus, Your Honor, has been and continues to be on
19 supporting the company and the restructuring. Believe that's
20 been consistent since the beginning of the case, since we
21 provided and ultimately reached a settlement on the debt
22 financing, and has been consistent with respect to the
23 financing commitments and the settlement that was announced to
24 the Court today.

25 And that continues to be our focus. And so I would

Colloquy

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1 just add to what Mr. Parlen said about management's focus on
2 urgency and being able to get the company through the remainder
3 of these proceedings. Your Honor, that's very, very important
4 to our group. And a lot of what we were focused on in reaching
5 very hard-fought compromises that led to the settlement was a
6 focus on avoiding litigation and making sure that this company
7 is best positioned to efficiently exit bankruptcy. And so
8 would just reiterate the comments of Mr. Alberino and Mr.
9 Parlen that that remains a principal focus through today's
10 relief and the remainder of the case. Thank you, Your Honor.

11 THE COURT: Okay. Thank you.

12 MS. DEXTER: Your Honor, Erin Dexter of Milbank LLP on
13 behalf of the RWE committee.

14 Your Honor, the RWE committee is supportive of the
15 global settlement that was reached between the debtors, the ad
16 hoc group, the committee, and our group that Mr. Parlen
17 discussed this morning and of the amended disclosure statement
18 and plan that reflect that settlement. Echoing my colleagues
19 this morning, this deal is the result of very hard fought
20 negotiations, particularly over the last few weeks. We
21 appreciate the efforts of all parties that brought us here this
22 morning. And unless Your Honor has any questions for me, I'll
23 step back.

24 THE COURT: I don't. Thank you.

25 All right. Then why don't we turn to the agenda? Mr.

Colloquy

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1 Parlen, we'll start with the disclosure statement.

2 MR. PARLEN: Okay. We can do that, Your Honor.

3 That's --

4 THE COURT: If that makes sense to you.

5 MR. PARLEN: -- item number 2. So yeah. Let me just
6 grab my --

7 THE COURT: Okay.

8 MR. PARLEN: Okay, Your Honor. So on the disclosure
9 statement motion, which was filed overnight, and I believe --
10 if I have my docket numbers correct; I was just trying to get
11 organized here -- is 1057 if I'm reading the agenda correctly.
12 This motion asks for a variety of relief under one motion but
13 primarily it seeks approval of the disclosure statement as
14 having adequate information under Section 1125 of the
15 Bankruptcy Code and approval of various case deadlines,
16 solicitation procedures, procedures related to the rights
17 offering, and the overbid, which will be the subject of the --
18 the substance of which is the subject of the other motion on
19 the agenda today.

20 Your Honor's just heard a lot about how extensively
21 the parties worked to get to the plan for which the disclosure
22 statement applies. And we know of no objection to anything in
23 this motion. Overnight, just for the record, the plan and
24 disclosure statement that were filed are reflected in the
25 agenda, but I believe, let's see here, the plan that we're

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1 referring to is docket number 1054, and the disclosure
2 statement is docket number 1055. In making these filings, we
3 also included a number of redlines across all the orders, the
4 documents, the ballots, so that's why the papers are so
5 voluminous.

6 Your Honor, I'd like to take the presentation in three
7 parts. One is the adequacy of information. Two is to discuss
8 the solicitation materials. And the third is the order itself
9 and the scheduling going forward.

10 Your Honor, we clearly believe that the disclosure
11 statement provides adequate information that will allow
12 eligible holders of claims to make an informed decision
13 regarding whether to vote to accept or reject the plan. We
14 filed the initial disclosure statement on August 30th. There's
15 been thirty-five days of notice. No one has objected with the
16 position that there is not adequate information.

17 The disclosure statement is comprehensive, covering
18 everything from the plan, the company's business plan, tax
19 issues, financing components, litigation. It's all in there.
20 It's been vetted extremely carefully by the company and as well
21 as the other parties-in-interest, including the UCC. So we do
22 submit that the disclosure statement satisfies 1125. Happy to
23 go into further detail if you'd like.

24 THE COURT: No, thank you.

25 MR. PARLEN: Okay. On the solicitation materials a

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1 number of the -- the U.S. Trustee commented on a number of
2 items, and Mr. Herron, I think, will speak for himself on what
3 the U.S. Trustee's issues were. A number of them were, not
4 surprisingly, around solicitation, how the ballots read, who
5 they're going to, making sure they are in a form acceptable.
6 We worked closely with Mr. Herron throughout the process.

7 One thing I did want to note, and I think Mr. Herron
8 will touch on, is that the form of the ballot follows Nordic
9 Aviation. In other words, the plan includes third-party
10 releases. And the plan, and through the balloting process,
11 permits parties to opt into those third-party releases. And if
12 they do so, they will get a release. The releases are
13 reciprocal and mutual. The way a party will do so is the party
14 will receive a ballot, every creditor, and they will have one
15 option to vote for or against the plan and another option to
16 opt into the release or not to opt in. So this was a form that
17 we, the U.S. Trustee's office, was involved in crafting in this
18 district and Nordic Aviation. And at the United States
19 Trustee's request, we followed that.

20 That ballot, if Your Honor wanted to look at it, is in
21 the binder. It's the class 6 ballot. That page --

22 THE COURT: I do have that. Is the class 5 ballot the
23 same?

24 MR. PARLEN: The class 5 ballot, I think it might be.
25 I was focused on 6. The class 5 ballots for the bonds, so

Colloquy

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1 there's a master ballot --

2 THE COURT: Right.

3 MR. PARLEN: -- and then there's the same kind process
4 in it. Yeah, it does have this --

5 THE COURT: In other words, opt in.

6 MR. PARLEN: Yeah, opt in. Now, the RSA parties are
7 obligated to do so, but that's by contract. So you'll see, for
8 example --

9 THE COURT: Okay.

10 MR. PARLEN: -- on, I think, page 306 of 370 on docket
11 number 1152, you'll see that there's a box there. And the same
12 thing, if you were to look at on class 6 ballot, which is you
13 will see page 322 of 370, same docket number 1152. And going
14 back to page 321, one, there is a choice to vote to accept or
15 reject the plan. And then secondly and independently of that
16 choice, there is the ability to opt in to the third-party
17 releases.

18 THE COURT: Right. So while we're on that topic, let
19 me just have a couple of specific questions here.

20 MR. PARLEN: Okay.

21 THE COURT: And I understand that for class 6, we've
22 moved correctly, I think, from opt-out to opt-in releases
23 across the board, right?

24 MR. PARLEN: Correct. The whole plan is like that.

25 THE COURT: Right. So just two questions. And I

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1 understand that when you're dealing with a document that's
2 hundreds of pages long and it's 2 in the morning, you might not
3 pick up all of the issues that might come to my attention.

4 So just on page 3 of the -- well, it's not numbered,
5 but where it says third-party release at the very beginning of
6 the disclosure statement.

7 MR. PARLEN: Okay.

8 THE COURT: Sort of a summary of the releases, and
9 then I'll get to the specifics of it. All right.

10 MR. PARLEN: Okay, Your Honor. I think I'm there.
11 I'm looking at docket number 1151.

12 THE COURT: All right. So it says on the second page
13 only holders of claims in class 5 and 6 are entitled to vote.

14 MR. PARLEN: Correct.

15 THE COURT: And that's fine. And then it says on the
16 next page all other holders of claims to an interest will be
17 deemed to have granted the releases to the extent that they
18 affirmatively opt in. Should we delete the word "other" there?
19 It seems to me that it should say "all holders of claims and
20 interests" because when you say --

21 MR. PARLEN: Yes.

22 THE COURT: -- "other", it seems to imply that class 5
23 and 6 are back in that opt-out scenario.

24 MR. PARLEN: That's right. All of them have the word
25 "other" there might be too limiting in the sense that all

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1 creditors who are going to give a release here have to opt in
2 to it.

3 THE COURT: Right. So what does "other" signify
4 there? I mean, is --

5 MR. PARLEN: We can cut that word. I think that was
6 probably something that was a vestige of --

7 THE COURT: Yeah, it certainly was. Yeah.

8 MR. PARLEN: Yeah. Okay. That's fine. We'll remove
9 that word.

10 THE COURT: Okay. And then over on what is page 112
11 in the redline document.

12 MR. PARLEN: Okay. And docket 1151? Okay.

13 THE COURT: Oh, 110 actually, yes.

14 MR. PARLEN: Page 110 of the document or --

15 THE COURT: And it's the releases by holders of claims
16 and interests.

17 MR. PARLEN: Okay. I see. Yes, I see it.

18 THE COURT: I mean, should that say, to the extent
19 that you opt in, et cetera, et cetera, et cetera. I don't
20 really see any opt-in language there unless I just missed it
21 and --

22 MR. PARLEN: Yeah, I think -- well, I think it
23 probably goes back to the "releasing party" definition, but
24 there's no reason, as I stand here, not to clarify that.

25 THE COURT: Yeah, because the releasing party

Colloquy

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1 definition is in the plan.

2 MR. PARLEN: Right. So --

3 THE COURT: And that's, I believe, the -- well, the
4 version that I'm looking at, paragraph 182 I think it is
5 definition of releasing party, but I don't think that says to
6 the extent that you opt in, at least the version that I'm
7 looking at.

8 MR. PARLEN: Okay. We will --

9 THE COURT: All right.

10 MR. PARLEN: -- clarify that language.

11 THE COURT: Yeah. I just want that to be consistent
12 with your understanding, and I think the ballot makes it clear.

13 MR. PARLEN: Yeah, we'll put in a parenthetical or
14 something that makes it clear that every releasing party --

15 THE COURT: Right.

16 MR. PARLEN: -- will have had to do that. Take that
17 act.

18 THE COURT: Right. I think you could just add the
19 phrase, "to the extent that you opt in" or something. "To the
20 extent that a creditor opts in". Something like that.

21 MR. PARLEN: Okay. We'll do that.

22 THE COURT: Okay.

23 MR. PARLEN: We'll submit revised language to the
24 Court.

25 THE COURT: All right. Okay. Thank you. Thank you

Colloquy

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1 for addressing those issues for me.

2 MR. PARLEN: Okay. So just, so Your Honor, we did
3 submit a redline disclosure statement order. And really, it's
4 not actually marked up all that much. I'm happy to answer any
5 questions Your Honor has about it. One area where we certainly
6 need the Court's view is on the schedule and the availability
7 if the Court's inclined to approve the disclosure statement and
8 let us solicit.

9 THE COURT: Right, right. And that's different from
10 the stipulation and that you were talking about before at --

11 MR. PARLEN: Correct, because it lays out all of
12 the -- so if we look at docket number 1152, which is a -- this
13 is the redline of the disclosure statement order.

14 THE COURT: Right.

15 MR. PARLEN: Docket number 1152. This is Exhibit B,
16 redline. Page 236 of 370. What Your Honor will see is a form
17 of order that starts with approval of the disclosure statement
18 and then moves into a proposed confirmation schedule, which is
19 on page 4 of that document, or page 238 of 370.

20 THE COURT: Right. In the prior version, you were
21 asking for Wednesday, November 13th and Thursday, November
22 14th?

23 MR. PARLEN: Correct. And if you look at this -- now,
24 that was when we thought we would have a contested confirmation
25 hearing. We would need two days of trial. Here. We're

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1 looking at what we think will be an uncontested confirmation
2 hearing, at least among the primary stakeholders, subject to
3 the United States Trustee's views. And so what we've laid out
4 in this table here, page 238 of 370, is solicitation timing
5 leading up to a hearing on November 13th if the Court is
6 available on that day.

7 THE COURT: November 13th would work. We'll have to
8 start at 10:30. I have matters on the 9:30 docket, really,
9 from --

10 MR. PARLEN: Okay.

11 THE COURT: -- stay matters, but we'll be done by 10
12 o'clock or so I'm pretty sure so --

13 MR. PARLEN: Okay. That works perfectly for us, and
14 we're very grateful for that. That will allow us to get ahead
15 of things towards emergence ahead of Thanksgiving, which is the
16 goal here.

17 THE COURT: All right. Then November 13th at 10:30.

18 MR. PARLEN: Okay. So with that, Your Honor, subject,
19 any questions and the items on the record that Your Honor
20 identified, we would ask the Court to enter the order. I'll
21 yield to Mr. Herron, if you want to -- if anyone else wants to
22 appear on this. But that's the debtor's request.

23 THE COURT: Okay. Thank you.

24 MR. PARLEN: Thank you very much.

25 THE COURT: Mr. Herron. Good morning.

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1 MR. HERRON: Good morning, Your Honor. Nicholas
2 Herron on behalf of the U.S. Trustee.

3 Your Honor, I want to thank Mr. Parlen and his team
4 for working with me and my office to resolve a number of issues
5 prior to today. He did preview for me a number of redline
6 versions of the disclosure statement plan and the disclosure
7 statement order. The revisions do reflect the agreements that
8 were reached between my office and the debtors, and we have no
9 opposition to the approval of the disclosure statement. There
10 are a couple of confirmation issues that Mr. Parlen and I are
11 working on, and we hope and we should be able to resolve those
12 before confirmation.

13 THE COURT: Okay. Thank you.

14 Mr. Alberino, did you want to be heard on the
15 disclosure statement?

16 MR. ALBERINO: No, Your Honor.

17 THE COURT: Okay.

18 MR. ALBERINO: No objection to approval.

19 THE COURT: All right. Thank you.

20 Does any other party wish to be heard on approval of
21 the disclosure statement as revised?

22 Mr. Parlen.

23 MR. PARLEN: Yes, Your Honor. Just a note. We will
24 submit, assuming, if Your Honor does approve the disclosure
25 statement order, we'd request that it would be entered today.

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25

1 We'll do our best -- we'll get our changes in that Your Honor
2 identified because otherwise we'll have issues potentially with
3 the solicitation notice.

4 THE COURT: Yes, we'll do the best we can to get it
5 entered today, but it obviously depends on when you get it to
6 us.

7 MR. PARLEN: Okay.

8 THE COURT: And we'll stay on top of that.

9 MR. PARLEN: Thank you.

10 THE COURT: All right. So hearing no further
11 objections, the Court finds that the disclosure statement, as
12 revised, does provide the creditors with adequate information
13 under Section 1125 of the Bankruptcy Code, and I will approve
14 it. And I'll ask Mr. Parlen to submit the order posthaste,
15 with the appropriate endorsements, and I'll enter it today.

16 MR. PARLEN: Okay. Yes, Your Honor. Thank you very
17 much.

18 THE COURT: Okay. Thank you. And you're going to
19 submit the stipulation as well as a separate order; is that
20 right?

21 MR. PARLEN: Yes.

22 THE COURT: Or is that just a stipulation that --
23 Mr. Williams.

24 MR. WILLIAMS: It's been submitted for endorsement by
25 Your Honor.

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1 THE COURT: Oh, it's in BOPS?

2 MR. WILLIAMS: BOPS, yes, Your Honor.

3 THE COURT: Okay. Very good. Thank you.

4 MR. WILLIAMS: Thank you.

5 THE COURT: Okay. Thanks.

6 MR. PARLEN: And with that, Your Honor, I'd like to
7 turn it over for agenda item number 1 to my colleague Michael
8 Colarossi.

9 THE COURT: Okay. Thank you.

10 MR. COLAROSSO: Good afternoon, Your Honor. Michael
11 Colarossi, Paul Weiss, for the debtors. I'll be presenting the
12 backstop motion.

13 As an initial matter, I would like to move the
14 declaration of Christian Tempke, docket number 1059, into
15 evidence. Mr. Tempke is present in the courtroom via video
16 conference and available for cross-examination.

17 THE COURT: Where is my set of exhibits?

18 I thought, Mr. Williams, you brought exhibits with
19 you, didn't you?

20 MR. WILLIAMS: Yes, Your Honor. This is a copy of all
21 pleadings. Mr. Tempke's declaration's exhibit 2 to this. I'm
22 happy to hand that up or --

23 THE COURT: All right. Would you, please? Do you
24 have another copy for the clerk, please?

25 MR. WILLIAMS: I do, Your Honor.

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1 THE COURT: Okay. Thank you. Thank you.

2 All right. Is there any objection to the Tempke
3 declaration, subject to cross-examination?

4 Hearing no objection, it will be admitted.

5 (Declaration of Mr. Tempke was hereby received into
6 evidence as Debtors' Exhibit --, as of this date)

7 MR. COLAROSSO: Thank you, Your Honor. Your Honor,
8 through the backstop motion, the debtors seek approval of the
9 debtors' entry into two agreements. That's the debt commitment
10 letter and the equity rights offering backstop agreement.
11 These agreements reflect months of extensive arm's-length
12 negotiations between the debtors and the ad hoc group. And
13 importantly, they collectively provide the debtors with the
14 committed exit financing they need to implement their Chapter
15 11 plan and emerge from these Chapter 11 cases.

16 Through the commitment letter, members of the ad hoc
17 group have committed to providing up to 1-billion dollar first
18 lien exit facility comprised of a 750-million dollar first lien
19 term loan and a 250-million dollar delayed draw term loan. And
20 through the backstop agreement, members of the ad hoc group
21 have agreed to backstop the over-250-million-dollar equity
22 rights offering, which is contemplated by the debtors' plan and
23 equity rights offering procedures. These commitments are
24 critical components to funding the debtors' reorganization
25 pursuant to their Chapter 11 plan, which, as noted by my

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1 colleague Mr. Parlen, is supported not only by the ad hoc
2 group, but also the UCC, the RWE committee -- and the RWE
3 committee in connection with the global settlement embodied in
4 the plan and the global settlement stipulation filed at docket
5 number 1155.

6 In connection with reaching the global settlement, the
7 commitment parties have agreed to certain changes to the terms
8 of the commitment letter and backstop agreement, which are
9 reflected in the revised proposed form of order filed at docket
10 number 1153. The changes reflected in the revised proposed
11 form of order are debtor-friendly changes that are in the
12 interest of the debtors' estates. Among other things, the
13 changes narrowed the circumstances in which the commitment
14 parties are entitled to commitment or termination fees.

15 Your Honor, we respectfully submit that the debtors'
16 entry into the commitment letter and backstop agreement is a
17 reasonable and sound exercise of their business judgment. As
18 evidenced by the Tempke declaration, the terms of the
19 commitment letter and backstop agreement are fair and
20 reasonable, the product of extensive arm's length negotiations,
21 consistent with the terms of commitment agreements utilized in
22 other large and complex Chapter 11 cases, and provided the
23 debtors with the committed financing needed to preserve their
24 going-concern value through reorganizing pursuant to their
25 Chapter 11 plan.

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1 THE COURT: Have the fees changed at all, the
2 commitment fee and the termination fee?

3 MR. COLAROSSO: No, Your Honor.

4 THE COURT: Okay.

5 MR. COLAROSSO: With that, Your Honor, unless you have
6 any questions, we respectfully request that Your Honor grant
7 the backstop motion and approve the debtors' entry into the
8 commitment letter and backstop agreement on the terms reflected
9 in the revised proposed form of order.

10 THE COURT: Okay. Thank you.

11 Mr. Alberino, do you want to be heard on this?

12 MR. ALBERINO: Briefly, Your Honor. With respect to
13 these motions, and I think Mr. Parlen alluded to this,
14 throughout the month of September, there were obviously efforts
15 aimed at trying to mitigate how much litigation we would throw
16 in front of you at today's hearing. And as part of that, there
17 were negotiations that we engaged in with the ad hoc group and
18 the company that led to, I think, a lot of improvements. I
19 think Mr. Colarossi said it right. Estate friendly, debtor-
20 friendly improvements to the commitment letters, and in
21 particular, limiting the circumstances under which termination
22 fees could potentially be paid.

23 But as part of the global settlement, the committee
24 has no objection to approval of the rights offering procedures
25 and the exit commitment fees as well, as modified in the

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1 revised form of order.

2 THE COURT: Okay. Thank you.

3 Mr. Herron, do you have any position?

4 MR. HERRON: Your Honor, the amended order -- or the
5 redline order, rather, reflects a couple of changes that the
6 U.S. Trustee requested, including limiting the indemnification
7 provision to exclude any work done on the plan. Also, any
8 defaulting party would not be indemnified. As well as
9 reimbursement of fees if a defaulting party -- well, if there
10 is a defaulting party, they would not be entitled to
11 reimbursement of fees. And there's also a review process of
12 the fees that would be incurred and reimbursable under that
13 provision. Based upon those changes, the U.S. Trustee has no
14 objection, Your Honor.

15 THE COURT: Okay. Thank you.

16 Does any other party wish to be heard on the backstop
17 motion?

18 All right. Well, I've reviewed the backstop motion,
19 and I find that it is a reasonable exercise of the debtors'
20 business judgment. The Court finds that in the context of the
21 impending confirmation of the plan and the global settlement
22 that the backstop agreement is in the best interest of the
23 debtors and the bankruptcy estate. And as I say, in the
24 context of confirmation of this plan, it is fair and
25 reasonable, and I will approve it. You can go ahead and submit

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1 your order on that as well, Mr. Parlen.

2 MR. PARLEN: Thank you, Your Honor. We'll do so.

3 THE COURT: Okay. Thank you. Does that conclude our
4 agenda for today?

5 MR. PARLEN: Yes, Your Honor. We have no other
6 business.

7 THE COURT: All right. Does any other party wish to
8 be heard on any other issues today?

9 All right. Well, I do want to thank the parties the
10 lawyers, the U.S. Trustee's office, Mr. Herron, and the
11 principals for very diligent work and professional work in
12 coming to agreements on this. I, frankly, was expecting a
13 hotly contested two-or-three-day disclosure statement hearing,
14 and I'm happy to learn that the parties have acted
15 professionally and have come to the Court with the global
16 settlement. And the Court appreciates it all around.

17 So submit your orders. I'll enter them. And I thank
18 you for your appearances today and your participation. And the
19 Court stands adjourned, and I hope everybody has a good
20 weekend.

21 MR. PARLEN: Thank you.

22 (Whereupon these proceedings were concluded at 12:13 PM)

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I N D E X

EXHIBITS:	DESCRIPTION	MARK	ADMIT
FOR THE DEBTORS:			
--	Declaration of Mr. Tempke		27

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C E R T I F I C A T I O N

I, River Wolfe, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



October 7, 2024

RIVER WOLFE

DATE

TTA-Certified Digital Legal Transcriber CDLT-265

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